



INTERIOR BOARD OF INDIAN APPEALS

Estate of Alice Cornelia White Hat/Red Feather

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF ALICE CORNELIA WHITE HAT/RED FEATHER

(Rosebud Sioux Allottee No. 4895, Deceased)

IBIA 73-18

Decided March 26, 1974

Appeal from a decision denying petition for rehearing.

Affirmed

Indian Probate: Guardian Ad Litem: Generally

It is the duty of an Administrative Law Judge to protect the interest of an infant party to a proceeding.

Indian Probate: Guardian Ad Litem: For Whom Appointed: Generally

Proper notice to minor children appears where notice has been given as required by duly promulgated rules and regulations, and the

individual appointed by the Administrative Law Judge appeared at the hearing and was present at every step of the hearing.

Indian Probate: Appeal: Generally

Where the whereabouts of the natural guardian of infant or minor children is not known, it is not error prejudicial to the rights of the minor children who are potential heirs, for the Judge to appoint an individual to represent them as guardian ad litem, though he may also be a potential heir.

The burden is on the appellant to establish that the rights of the minor children have been affected during the proceedings because of such appointment.

APPEARANCES: Gary R. Thomas, Esq., for appellant, Phillip Under Baggage.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This is an appeal from the decision of Administrative Law Judge Alexander H. Wilson, denying the petition of Phillip Under Baggage for rehearing.

Subsequent to a hearing held on October 3, 1972, at Rosebud, South Dakota, the Judge on December 27, 1972 issued an Order Determining Heirs of the decedent who died intestate on May 15, 1969. The Judge found that the decedent was survived by two sons and six children of a prior-deceased daughter, Jessie Red Feather Under Baggage.

The appellant who is the father and natural guardian of the grandchildren of the decedent contends that he is the proper party to represent them and their interests. He further contends that the appointment by the Judge of Rossiter J. Red Feather, a potential heir, to act in the capacity of guardian ad litem for the grandchildren is error since the interests of the guardian ad litem and the grandchildren are in conflict. We find that upon the relationship established by the record, the children were awarded their statutory share of the estate.

Regulations promulgated by the Department provide that a Judge may receive and hear proofs at a hearing to determine heirs of a deceased Indian only after notice of the time and place of the hearing is given to all interested parties. Among other things, notice of the time and place of the hearing is required to be posted at least 20 days prior to such hearing in five or more conspicuous places in the vicinity of the designated place of hearing. A copy of the notice is required to be served on each party in interest by personal service or by mail, addressed to the party in interest at his last known address. Moreover, these regulations provide that all parties in interest are bound by the decision of the Judge if they lived within the vicinity of any place of posting during the posting period, whether they had actual notice of the hearing or not. See 43 CFR § 4.211(a) through (c).

The record discloses that notice of the hearing to be held on October 3, 1972 at Rosebud Agency House #16, Rosebud, South Dakota, was mailed to Rossiter Red Feather, St. Francis, South Dakota, for himself and as guardian ad litem for the grandchildren in question. In addition, notices were sent by mail to other potential heirs, and to Alex Phillip Baggage, c/o Pine Ridge Agency, Bureau of Indian Affairs, Pine Ridge, South Dakota 57770.

Notices

were also posted at the Rosebud Agency, Bureau of Indian Affairs, and at the Post Offices at Pine Ridge, Rosebud, Mission, Okreek, Kyle and St. Francis, all in South Dakota.

The record is void of evidence showing the whereabouts of the grandchildren or the appellant. Consequently, in the absence of evidence to the contrary, we find that the whereabouts of the appellant and the grandchildren was not known to the Judge.

It has been consistently held that it is the duty of a court to protect the interest of an infant party in a litigation. In keeping with this duty the court may appoint a guardian ad litem to prosecute or defend a suit on behalf of a party incapacitated by infancy or otherwise. See Kingsbury v. Buckner, 134 U.S. 650, 10 S. Ct. 638 (1890).

The Department adheres to this same concept in proceedings where a minor is concerned.

The Board finds based upon the complete record that the Judge gave due and sufficient notice of the time and place of the hearing to all interested parties and that the guardian ad litem appointed

by the Judge to represent the minor children appeared at the hearing and was present at every step of the hearing.

The appellant contends that Rossiter James Red Feather, guardian ad litem, was unfit to act as guardian because he too was a potential heir, and as such could not protect the interests of the minors.

It was within the power of the Judge, under whose watchful eyes the guardian ad litem acted, at any time to inquire into his fitness to represent the interests of the minors, to remove him if he was a mere intermeddler, and to allow someone to be substituted in his place. See Kingsbury v. Buckner, supra.

The appellant fails to allege a single incident or act by the guardian ad litem either during or after the proceedings to substantiate his implied contention that the rights of the minor children were in some way prejudiced or irreparably damaged.

Accordingly, we find that the minor children were properly represented and that their rights were fully protected. Moreover, we conclude that the burden is upon the appellant to allege and establish that the rights of the minor children were adversely

affected during the course of the proceedings and by the ultimate decision based thereon.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, IT IS HEREBY ORDERED:

That the Order Determining Heirs dated December 27, 1972, in the above-entitled matter, be, and the same HEREBY IS AFFIRMED.

This decision is final for the Department.

//original signed
Mitchell J. Sabagh
Administrative Judge

I concur:

//original signed
David J. McKee
Chief Administrative Judge